

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

ALPHONSO LEE,)	
)	
Plaintiff,)	NO. CV-08-3013-LRS
)	
vs.)	ORDER GRANTING DEFENDANTS'
)	MOTION TO DISMISS
BERNAL BACA, WILMA DULIN,)	
KATHRYN BAUER, KATHLEEN ASHWORTH,)	
BONNIE LABBEE, RHONDA TAYLOR,)	
a/k/a YAKIMA EXECUTIVE BOARD)	
(2006-2007))	
Defendants.)	

BEFORE THE COURT is Defendants' Motion to Dismiss, Ct. Rec. 10, filed September 8, 2008; and Plaintiff's Motion For Partial Summary Judgment, Ct. Rec. 14, filed September 26, 2008.

Defendants' Motion to Dismiss

On July 7, 2008, Plaintiff Alphonso Lee brought a motion to amend his complaint, which contained a variety of allegations against the American Federation of Teachers-Yakima, Local No. 1485, an affiliate of the American Federation of Teachers-Washington ("AFT-Yakima"), a labor organization. The Court granted his request (Ct. Rec. 7) on August 18, 2008. Plaintiff, through the amended complaint, alleges claims against the individuals who were members of the governing board of AFT-Yakima during the 2006-2007 academic year. Plaintiff's Amended Complaint alleges that the individual

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1 members of the AFT-Yakima's executive board violated their duty to
2 fairly represent him.

3 Defendants assert that pursuant to Federal Rule of Civil
4 Procedure 12(b)(6), the Court must dismiss this action because
5 Plaintiff can prove no set of facts in support of his claim which
6 would entitle him to relief. *Parks School of Business, Inc. v.*
7 *Symington*, 51 F.3d 1480, 1484 (9th Cir. 1995). Specifically,
8 Defendants argue that they cannot be held personally liable to
9 Plaintiff for the alleged actions they took or failed to take in
10 their role as members of the executive board of AFT-Yakima.
11 Defendants conclude that the law is clear that claims a union has
12 breached its duty to fairly represent an employee cannot be brought
13 against individuals, but only against labor organizations.

14 A review of Plaintiff's specific allegations in the Amended
15 Complaint confirm that all of the claims against Defendants consist
16 of assertions that Defendants failed to ensure that Plaintiff's
17 union, AFT-Yakima, properly fulfilled its legal obligations to him
18 under the collective bargaining agreement. The suit is therefore
19 barred under United States Supreme Court and Ninth Circuit authority
20 holding that a union itself, and not the union's agents, may be held
21 liable for acts performed on the union's behalf in the collective
22 bargaining process. *Atkinson v. Sinclair Refining Co.*, 370 U.S.
23 238, 247-49 (1962); *Peterson v. Kennedy*, 771 F.2d 1244, 1256 (9th
24 Cir.1985). Defendants argue that the immunizing effect of *Atkinson*
25 has been applied to a wide variety of claims based on federal law,
26 whenever the claim is, in essence, a claim against a person for
27 actions taken in his or her role as a union official.

28 In opposition to Defendants' Motion to Dismiss, Plaintiff,

1 proceeding pro se, states in his "Declaration in Opposition to
2 Defendants' Motion For Summary Judgment [sic]" that he never
3 "intended to drop AFT from the Amended Complaint." Ct. Rec. 13.

4 Defendants reply that despite Plaintiff's arguments to the
5 contrary, it is clear from the totality of Plaintiff's pleadings
6 that it was his intent to hold individual members of AFT-Yakima
7 liable for the alleged misdeeds of the union rather than AFT-Yakima
8 itself. Ct. Rec. 22 at 3-4.

9 The Court agrees with Defendants. It is clear that Plaintiff
10 sought to amend his complaint to limit his claims to a small group
11 of individual members of AFT-Yakima- the 2006-2007 AFT-Yakima
12 Executive Board. Confirming his intent to hold only these members
13 of AFT-Yakima liable, Plaintiff subsequently attempted or
14 effectuated service of the Amended Complaint on each individual
15 listed in his Motion to Amend. Ct. Rec. 8. The Amended Complaint
16 no longer contains any reference to AFT-Yakima. It is the typical
17 practice of the Court to disallow amended complaints to incorporate
18 by reference any part of the original complaint on file. The
19 "Amended Complaint" must be a wholly separate and self-contained
20 document. Because all of the actions complained of by Plaintiff
21 were actions taken by his former union in the process of addressing
22 his contract grievances, the Atkinson immunity principle applies and
23 the named individual members of his former union cannot be held
24 liable for those actions, regardless of the role they may have
25 played in directing the union to take those actions. As such, the
26 suit shall be dismissed as a matter of law.

27 Based upon the reasons and authorities cited above, **IT IS**
28 **HEREBY ORDERED:**

1 1. Defendants' Motion to Dismiss, **Ct. Rec. 10**, filed
2 September 8, 2008 is **GRANTED**. Plaintiff's claims against the AFT-
3 Yakima Executive named Board (2006-2007) members are **dismissed with**
4 **prejudice**.

5 2. Plaintiff's Motion For Partial Summary Judgment, **Ct. Rec.**
6 **14**, filed September 26, 2008 is **DENIED AS MOOT**.

7 3. The District Court Executive is directed to:

8 (a) FILE THIS ORDER;

9 (b) PROVIDE A COPY TO COUNSEL OF RECORD AND PRO SE
10 PLAINTIFF;

11 (c) ENTER JUDGMENT CONSISTENT WITH THIS ORDER; and

12 (c) CLOSE THIS FILE.

13 **DATED** this 31st day of October, 2008.

14 ***s/Lonny R. Suko***

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16 LONNY R. SUKO
17 UNITED STATES DISTRICT JUDGE
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